

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

IN RE: ASHLEY MADISON CUSTOMER DATA	)	
SECURITY BREACH LITIGATION	)	
	)	MDL No. 2669
This Document Relates to:	)	
	)	4:15-MD-2669-JAR
ALL CASES	)	
	)	

**MOTION FOR FINAL APPROVAL OF SETTLEMENT, APPROVAL OF CY PRES  
DISTRIBUTION AND TO OVERRULE THE SINGLE “OBJECTION” TO THE  
SETTLEMENT**

Plaintiffs in the above-captioned action, by and through their attorneys, hereby move pursuant to Rule 23 of the Federal Rules of Civil Procedure for entry of a Final Order: (i) granting final approval of the proposed settlement, (ii) approving the settlement as fair and reasonable, (iii) deeming Class Notice to be compliant with Federal Rule of Civil Procedure Rule 23 and due process, and (iv) granting final class certification for settlement purposes.

Class Settlement Counsel also move for the Court to issue an order (i) approving the distribution of the remainder of the Net Settlement Fund to any *cy pres* recipients (to whom a pro-rata equal share of any remainder of the Settlement Fund will go) approved by the Court, and (ii) overruling Mr. O'Malley's objection to the settlement. Pursuant to the schedule set out in the Preliminary Approval Order, Class Settlement Counsel also includes in this motion its list of exclusions. The legal basis and facts in support of this motion are included in Plaintiffs' Memorandum of Law In Support of Motion for Final Approval of Settlement, Approval of Cy Pres Distribution, and To Overrule the Single Objection to the Settlement, which is filed

concurrently herewith (the “Memorandum of Law In Support of Final Approval”). Defendants do not oppose this Motion.

In support thereof, Plaintiffs state as follows:

1. Plaintiffs and Defendants have executed a Stipulation of Settlement (“Stipulation of Settlement”), dated July 14, 2017, and filed with this Motion as Exhibit 1, which provides for the payment into a Settlement Fund by the Defendants of Eleven Million, Two Hundred Thousand Dollars and no cents (\$11,200,000). The Settlement Fund is inclusive of all payments to Class Members as well as court-awarded fees and costs, notice and administration costs, and incentive awards to the Class Plaintiffs, as described in the Stipulation of Settlement. Payment will be made from the Settlement Fund to class members, as more fully described in the Stipulation of Settlement.

2. As described more fully in the accompanying Memorandum of Law In Support of Final Approval, the settlement outlined in the Stipulation of Settlement is fair, reasonable, and adequate, as well as in the best interests of the Class. Notification to the Class of the details of the Stipulation of Settlement was appropriate and was accomplished as set out in the Preliminary Approval Order. A Proposed Order will be filed with the Court in advance of the Final Approval Hearing Scheduled for November 20, 2017.

3. Plaintiffs respectfully submit that the proposed Notice Program met the requirements of Fed. R. Civ. P. 23, comported with due process, and constituted due, adequate, and sufficient notice to all Class Members.

4. Final class certification for settlement purposes should be granted for the reasons set out in the Motion for Preliminary Approval and due to the fact that nothing has occurred since the Court granted preliminary class certification for settlement purposes.

5. The single “objection” from Mr. O’Malley should be overruled because most of the damages he claims are highly individualized and cannot be addressed in a class settlement, the settlement is substantial and will not soon be forgotten by a company who represented to the FTC (and which the FTC accepted) that its financial condition impaired its ability to pay more than \$1,657,000 (resulting in a suspension of Avid’s total settlement of \$17,500,000 there), and organizations other than Avid, including law enforcement in the United States and Canada, attempted to identify the hacker without success and therefore Avid made steadfast attempts to find the criminal that hacked its website.

6. Class Settlement Counsel respectfully submits that a *pro rata cy pres* distribution of the remainder of the Net Settlement Fund to the Charities jointly presented to the Court is proper here because many class members did not want to be directly contacted or were afraid to submit claims for fear of further damage by being associated in any way with AshleyMadison. A *cy pres* award to a Charity that will work to prevent or remedy the types of harms experienced by Class Members will confer a benefit on the Class, without increasing any perceived risk of future harm to Class Members that want nothing more to do with Avid.

7. A list of exclusions/opt-outs from the settlement is included in Section V of the Memorandum of Law In Support of Final Approval.

WHEREFORE, Class Settlement Counsel respectfully request that the Court grant final approval of the proposed Settlement, approve the Settlement as fair and reasonable, deem Class Notice to be compliant with Federal Rule of Civil Procedure Rule 23 and due process, and grant final class certification for settlement purposes. Class Settlement Counsel also requests that the Court (i) approve the distribution of the remainder of the Net Settlement Fund to any *cy pres* recipients (to whom a pro-rata equal share of any remainder of the Settlement Fund will go)

approved by the Court, and (ii) overrule the Mr. O'Malley's objection to the settlement. A proposed order will be submitted to the Court prior to the Final Approval Hearing set for November 20, 2017.

Date: October 20, 2017

Respectfully Submitted,

THE DRISCOLL FIRM, P.C.

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*Class Settlement Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all parties.

/s/ John J. Driscoll